IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9242 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

PRESIDENT RETIRED LAND RECORDSPENSIOMERS EMPLOYEES UNION & 45 - Petitioner(s)

Versus

TATE OF GUJARAT & 2 - Respondent(s)

==========

Appearance :

MR KIRAN YAJNIK for Petitioner(s) : 1 - 20.None for Petitioner(s) : None for Petitioner No(s).: for Petitioner(s) : 21 - 46.
MR LB DABHI, AGP for Respondent(s) : 1 - 3.

==========

CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 05/12/2005

ORAL JUDGMENT

1. The petitioners, in all 46, have filed this petition under Article – 226 of the Constitution of India, praying for quashing and setting aside the decision and/or letter at Annexure-A-1 to A-4 to the petition written by the respondents refusing the promotion to the petitioners in higher promotional posts. The petitioners have also sought for the direction to the respondent to consider the representations and accept the request of the petitioners to place them on promoted posts alongwith salary grade which they ought to have got previously with all consequential benefits and to make the payment of difference of salary of higher post with 18% interest till the date of payment.

2. It is the case of the petitioners that this

Court has passed an order and judgment dated 13.12.1996 in Special Civil Application No.5181 of 1984 giving certain directions to the respondent. However, those directions were not implemented so far as the petitioners are concerned. The petitioners were informed that the decision of this Court was applicable only to the petitioners of that case and it was not applicable to the present petitioners.

3. Mr.Kiran Yagnik, learned advocate appearing for the petitioners has submitted that the respondent's refusal to grant the benefit of promotion to the petitioners is not only contrary to the judgment of this Court but it is also contrary to the provisions of State Reorganisation Ac, 1956, Saurashtra Civil Service Clarification And Recruitment Rules, 1956, Bombay Reorganisation Act, 1960, Government of Gujarat Circular No.1170/K dated

20.3.1970 and Government of Gujarat Circular letter No.KTP/2179/Vol/349 dated 17.7.1990. Mr.Yagnik further submitted that the respondents have deprived the petitioners' legitimate and legal right of promotion to higher posts and related grades at the relevant point of time. He has further submitted that all the petitioners were appointed in the cadre of Surveyors and Clerks between the period of January, 1951 to August, 1955, in erstwhile State of Saurashtra. They were allocated to the State of Maharashtra and, thereafter, on bifurcation of Maharashtra State, they were ultimately absorbed in the service of State of Gujarat in 1960. He has further submitted that the petitioners have passed the sub-service departmental examinations and they were promoted to the next higher post at the relevant point of time. All the service conditions of the petitioners were to be

governed by the rules and regulations framed by the erstwhile State of Saurashtra, from time to time. He has further submitted that under provisions of the Manual Chapter-9, the criteria for promotion to higher grade was according to seniority of employees as shown in the gradation list of next lower post. This rule further provides for a condition of employees, who may be selected for the promotion to the higher post, shall have to pass the sub-service departmental examination, within a period of three years from the date of enlistment and confirmation on the promotional post and the same would be subject to passing of the said examination.

4. Mr.Yagnik further submitted that in the year 1956, the then Raj Pramukh of State of Saurashtra framed rules known as Saurashtra Civil Service (Classification and Recruitment)

Rules, 1956, in exercise of powers conferred under the provision of Article 309 of the Constitution of India. The said rules provide that the clerks and surveyors, who have passed the sub-service departmental examinations and have put in at least four years in service are eligible for promotion. He has further submitted that the State of Saurashtra has also framed the rules for examination of sub-ordinate service of land records department, under its notification dated 1.6.1954. Rule-2 of these rules stipulates, the cadre of subordinate services of Land Record Department, which included head Surveyors, Head Quarter Assistant (Shirestedar and Head Clerk) carrying the pay scale of Rs.475 – 700. Rule-3 of the above rules, further provides that all the employees falling under these categories mentioned in Sub Rule-2 shall be required to pass the subordinate service departmental

examination, within a period of three years from the date of promulgation of the said rules.

5. Mr.Yagnik further submitted that the petitioners were governed by the said recruitment and examination rules and they have passed the subordinate service departmental examinations and have put in more than four years service in the cadre of clerk and surveyors and they are eligible for promotion to the next higher grade post of head surveyors / head quarter Assistant / head clerks in the pay scale of Rs.475-700 from the grade of Rs.360-560, as per seniority in gradation list published by department.

6. Mr.Yagnik further submitted that the gradation list was published on 24.2.1984 inter alia showing the petitioners at various serial

numbers. In the gradation lists, there were persons who were juniors to the petitioners, but they have been promoted, whereas the petitioners though seniors to them have been overlooked. This was done only because the respondents have not taken into consideration the petitioners to the higher post to the cadre of Rs.475-700, as according to them the petitioners were not qualified for being promoted to the said posts, as they have not passed Land Revenue Qualifying (L.R.Q.)Examination.

7. Mr.Yagnik further submitted that the petitioners were fully qualified for being promoted, because they were not required to pass the L.R.Q. Examination, in as much as they were all allocated government servants, who were recruited in the service of the erstwhile State of Saurashtra between 1951-1956, and by

virtue of the fact that they were allocated to the State of Maharashtra and, thereafter, on bifurcation of Maharashtra State, they were ultimately absorbed in the State of Gujarat in the year 1960. It was sufficient for them to pass Sub Service Department Examination, prior to being eligible for recruitment to the Higher Post.

8. Mr.Yagnik further submitted that despite the aforesaid clear cut position, the respondents have acted contrary to the relevant rules and regulation of service conditions and instructions issued by the General Administration Department Circular dated 20.3.1970. They have also directed their various subordinate departments that they may require to review the rules of departmental examination, with which they were concerned and so far as they were adversely affected by the

conditions of service of the allocated government servants. It was further directed that if the cases were few, reference to the Central Government would be unnecessary and in such cases, the departmental examination rules may be amended or they may not be applied to the allocated government servants and they may be treated as exempted from passing such examination. Mr.Yagnik further submitted that in Special Civil Application No.5181/1984 the point was raised before this Court as to whether or not the conditions of service of allocated government servants could be used to the disadvantage, without prior approval of the Central Government having regard to the provisions of Section 51(6) of the Bombay Reorganisation Act, 1960, and this Court has held that the expressed conditions of service used in the proviso to Section 81(6) of the Act and has obviously been translated into the

provisions from the proviso to Article-309 of the Constitution of India and in the absence of any definite indication to the contrary including the rules and regulation relating to the passing of the prescribed examination and eligibility qualification for promotion, the Court has allowed the petition and directed the respondent to consider the cases of the petitioners for promotion to the post carrying the pay scale of Rs.475-700 at the relevant time with effect from the date on which their juniors were promoted. The Court has also made it very clear that the said exercise has to be undertaken by the respondents within a period of six months from the date of receipt of certified copy of the said order. In case the petitioners or some of the petitioners are found suitable for promotion from the date of which their juniors were promoted they shall be entitled for all consequential benefits i.e.,

fixation of pay on the promotional post, fixation of their pay in the revised pay scale, if any made, yearly grade increment in the higher pay scale as well as the revision of retirementary benefits, as the petitioners' counsel stated that all the petitioners have retired by then.

9. Mr.Yagnik has further submitted that the ratio of above judgment is equally applicable to the facts and circumstances of the present case. Mr.Yagnik has further relied on the decision of this Court in Special Civil Application No.3820 of 1984 decided on 3.8.1996, for the limited purpose that if this Court has taken a view in the particular matter, the same would be applicable to the other persons similarly situated. In this context, the Court has taken a view that not granting the same benefit to similarly situated

persons is absolutely unjustified, unreasonable and arbitrary. The Court has observed that it is really shocking that the government has declined to accept the representation of the petitioners only on the aforesaid ground. The Court has further observed that it is not expected of the Welfare government to behave and deal with its own employees in the aforesaid manner and fashion. There is no defence in substance and whatever defence taken for is taken for the sake of defence. While making such a defence the respondent forgot that the petitioners have approached this Court in the year 1984 by this Special Civil Application. The respondents have acted most unfairly and unreasonably in the present case. The Court, therefore, did not find any justification with the ground which has been given out for depriving of the benefit of the resolution dated 18.11.1977 to the said

petitioners.

10. Relying on the aforesaid judgment Mr.Yagnik has submitted that in the present case the respondent has raised same defence and denied benefit to the petitioners only on the ground that the decision rendered in Special Civil Application No.5181/1984 on 13.12.1996 was applicable to the petitioners of that petition only. He has, therefore, submitted that since the petitioners are also similarly situated persons, the same benefit should have been given to them.

11. Mr.L.B.Dabhi, learned AGP appearing for the respondent on the other hand opposing this petition and submitted that the benefit of earlier petition should not be granted to the present petitioners. He has further submitted that the claim made by the petitioners is not

acceptable in view of the fact that they have not passed examination on the date of their demand of the pay scale. He has further submitted that as per the circular dated 17.3.1980 issued by the General Administration Department, it has been laid down to pass the qualifying examination for the purpose of promotion. He has further submitted that 9 candidates of the list submitted who have cleared the L.R.Q Examination have been promoted. While other candidates who have not passed the L.R.Q.Examination as required under the Government circular, are not entitled to get benefit or promotion. He has further submitted that the decision rendered by this Court in Special Civil Application No.5181/1984 was carried into Letters Patent Appeal Bench, however, the same was dismissed only on the ground of limitation and S.L.P filed before the Hon'ble Supreme Court was not entertained.

However, there was no decision from the higher forum so far as merit of the matter is concerned. He has further submitted that even in Special Civil Application No.5181/1984 this Court has clarified that reasoned order may be passed on the basis of the merits of the case of each petitioner. He has, therefore, submitted that in view of the Government Circular, the petitioners were not entitled to the benefit. The petition, therefore, deserves to be dismissed, as it has no substance on merit.

12. Mr.Dabhi, further submitted that the promotion is not a matter of right and unless and until the requisite conditions are satisfied, the promotion cannot be granted to the petitioners. In support of his submission he relied on the decision of Hon'ble Supreme Court **in the case of Dwarka Prasad And Others**

vs. Rudresh Kumar Thomar And Others, reported in (2003)6 Supreme Court Cases 535, wherein it is held that the promotion cannot be claimed as of right. Articles 14 and 16 of the Constitution of India cannot be pressed into service to describe the fixation of lower quota for POs as discriminatory. It is well established that the right to be considered for promotion on fair and equal basis without discrimination may be claimed as a legal and a fundamental right under Articles 14 and 16 of the Constitution but chances of promotion as such cannot be claimed as of right. He has further submitted that the petitioners as a matter of fact cannot be granted promotion on the basis of petitioners of Special Civil Application No.5181/1984 were considered by this Court and certain directions were issued.

13. After having heard learned advocates for the

respective parties and after having gone through the relevant service rules and the decision of this Court rendered earlier in similar situation, the Court is of the view that there was no justification in denying the benefit, only on the ground that the said judgment was applicable to those petitioners only. Since the petitioners were also similarly situated persons and they have also put on record service and passed the necessary examination, as discussed earlier, the promotion benefit should be given to the petitioners. So far as present petition is concerned, as directed by this Court in the earlier order and judgment, this exercise will have to be undertaken by the respondents.

14. Keeping in mind the entire facts of that case, the Court hereby directs the respondents to consider the case of the petitioners for

promotion to the post carrying the pay scale at the relevant time with effect from the date on which their juniors were promoted. Since the period of time covered by the respondents is too long and the matter is very old, the respondents are required to decide the matters, as expeditiously as possible, preferably within a period of 3 months from the date of receipt of certified copy of this order or a writ from this Court. The Court hereby further directs the respondent authorities to see that in case the petitioners or some of the petitioners are found suitable for promotion from the date on which their juniors were promoted, they should be declared as entitled for all consequential benefits i.e., fixation of pay on the promotional post, fixation of their pay in the revised pay scale, if any made, yearly grade increment in the higher pay scale as well as the revision of retiring benefits, as the

petitioners have retired by now. The Court hereby also clarifies that the petitioners will be entitled for notional benefits from the date of promotion of their juniors till the date of filing of this Special Civil Application, they will be entitled for actual benefit from the date of filing of this writ petition. The Court also makes it very clear that in case the petitioners or some of the petitioners are not found suitable for promotion by the respondent authorities in respect of such petitioners the respondent authorities will pass a reasoned order and a copy of the same may be sent to such petitioners forthwith.

15. Subject to the aforesaid directions and observations this petition is allowed. Rule is made absolute to the above extent without any order as to costs.

(K. A. PUJ, J.)

kks